



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Donnelly, et al.

Serial No.: 09/835,694 Case No.: 18972PCA

Art Unit: 1636

Filed: April 16, 2001

Examiner:

Ketter, James S.

For: NUCLEIC ACID VACCINES AGAINST HUMAN
INFLUENZA VIRUS (As amended herein)

MAIL STOP: PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Ms. Karen Creasy

**RENEWED PETITION UNDER 37 C.F.R.
§1.78(a)(3) TO ACCEPT AN
UNITINTENTIONALLY DELAYED PRIORITY
CLAIM UNDER 35 U.S.C. § 120**

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS
FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450,

ON THE DATE APPEARING BELOW.

BY: J. Marshall
MERCK & CO., INC.
DATE: 20 Dec. 2005

Sir:

This Renewed Petition is entered in response to the DECISION ON PETITION
UNDER 37 C.F.R. §1.78(a)(3), mailed 25 July 2005.

(1) Please charge the fee under 37 C.F.R. 1.17(t) to Deposit Account No. 13-2755 as
a large entity.

(2) The delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii)
and the date of entry of the First Petition and this Renewed Petition was unintentional.

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(3) In response to the DECISION ON PETITION UNDER 37 C.F.R. §1.78(a)(3), mailed 25 July 2005, the continuing date for the above-identified has been amended to read as follows:

-- This application is a continuation of U.S. application serial no. 08/461,268, filed June 5, 1995, now abandoned, which is a continuation-in-part of PCT international application no. PCT/US94/02751, filed March 14, 1994, which is a continuation-in-part of U.S. application serial no. 08/089,985, filed on July 8, 1993, now abandoned, which is a continuation of U.S. application serial no. 08/032,383, filed March 18, 1993, now abandoned.

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REMARKS

The First Petition under 37 C.F.R. §1.78(a)(3) was dismissed in view of:

- (i) the fact that application serial number 08/089,985 "cannot be a continuation of Application No. 08/461,268 since the application (08/461,268) was filed March 18, 1995," and;
- (ii) that "it is not clear why Application No. 08/450,462 is mentioned."¹

Applicant respectfully cure both defects by (i) amending the continuing data to read 08/032,383 as the application number for the March 18, 1993 filing; and (ii) removing reference to application serial number 08/450,462. *Both amendments are included in a concurrently filed Amendment, under 37 C.F.R. §1.114.* A courtesy copy of this Amendment is enclosed with this Renewed Petition.

Briefly, as noted *supra*, reference to application no. 08/461,268 (for a March 18, 1995 filing) instead of the correct reference to application no. 08/032,383 as the application number of the March 18, 1992 filing was merely an editorial oversight incorporated during the most recent amendment to the continuing data. Reference to the 08/032,383 application serial number can be found in the original continuing data for this application, as well as on the Filing Receipt.


¹ See page 2 of DECISION ON PETITION UNDER 37 C.F.R. §1.78(a)(3), mailed 25 July 2005

Applicants, as suggested by the Petitions Examiner, has removed reference to the national phase application filed from the cited PCT application (i.e., U.S. application serial no. 08/450,462). Applicants respectfully note that in the First Petition paper arguments were presented as to why inclusion of this application in the continuing data was not necessary. Thus, the Petitions Examiner and Applicant now seem to be in agreement that inclusion of that application data is not necessary to preserve continuity of the filings for this patent application family.

Applicants respectfully note that with the current amendment, the continuing data now listed coincides with the continuing data provided on the Filing Receipt. To this end, Applicants respectfully request that this Renewed Petition, in view of the concurrently filed Amendment under 37 C.F.R. §1.114, be GRANTED.

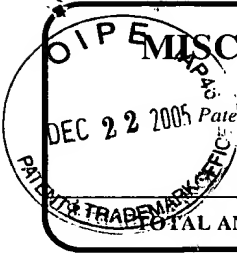
Respectfully submitted,

Date: 20 DECEMBER 2005

By: 
J. Mark Hand
Reg. No. 36,545
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P.O. Box 2000
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DAC

JPW



MISC. FEE TRANSMITTAL

Patent fees are subject to annual revision.

Complete if Known

Application Number	09/835,694
Filing Date	April 16, 2001
First Named Inventor	Donnelly et al.
Examiner Name	James S. Ketter
Group Art Unit	1636
Attorney Docket Number	18972PCA

TOTAL AMOUNT OF PAYMENT \$130

METHOD OF PAYMENT

☒ Deposit Account

Deposit Account Number 13-2755

Deposit Account Name Merck & Co., Inc.

The Director is authorized to:

☒ Charge fee(s) indicated below

☒ Credit any overpayments

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17

FEE CALCULATION

FEES

Large Entity

Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	Surcharge - late filing fee or oath	
1051	130	Non-English Specification	
1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1402	500	Filing a brief in support of an appeal	
1452	500	Petition to revive - unavoidable	
1453	1,500	Petition to revive - unintentional	
1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	Submission of Information Disclosure Statement	
1809	790	Filing a submission after final rejection (37 CFR 1.129(a))	
	790	For each additional invention to be examined (37 CFR 1.129(b))	
	130	Statutory Terminal Disclaimer under 37 CFR 1.321	
Other fee (specify)	Renewed Petition 37 CFR 1.78(a)(3) to Accept an Unintentionally Under 35 USC 120		130
Other fee (specify)			

TOTAL \$130

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date appearing below.

MERCK & CO., INC.

By J. Mark Hand Date 20 Dec 2005

SUBMITTED BY

Complete (if applicable)

Type of Transmittal	J. Mark Hand		Reg. Number	36,545
Signature	J. Mark Hand		Deposit Account User ID	
Date	20 Dec 2005			